

**UT 08-3**

**Tax Type: Use Tax**

**Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

) No.: 07- ST- 0000  
) NTL No.: 00 00000000000000  
) IBT No.: 0000-0000

v.

) Use Tax

**JANE DOE,**

) Julie-April Montgomery

**Taxpayer.**

) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Jane Doe *pro se*; Marc M. Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

This matter arose from a protest filed by Jane Doe (“Taxpayer”) to the “Audit Correction and/or Determination of Tax Due” (“Determination”) completed on November 17, 2006 and issued to her by the Illinois Department of Revenue (“Department”). The Determination was issued pursuant to the provisions of the Illinois Use Tax Act (“UTA”), 35 ILCS 105/1 *et seq.*, on merchandise purchased outside of Illinois for which no tax was paid. An evidentiary hearing was held on April 17, 2008 at which the Department presented documentary evidence and the Taxpayer presented only her testimony. Following the submission of all evidence and a review of the record, it is

recommended that this matter be resolved in favor of the Department. In support thereof, I make the following finding of fact and conclusions of law:

**Finding of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the SC-10-K "Audit Correction and/or Determination of Tax Due" for the period June 2006, which reflects use tax due of \$1,206, a late filing penalty of \$24, and a late payment penalty of \$241 for a total amount due of \$1,471.  
Department Ex. No. 1; Tr. p. 9.

**Conclusions of Law:**

The UTA is complementary to the Retailers' Occupation Tax Act ("ROTA"). Chicago Tribune Co. v. Johnson, 106 Ill. 2d 63 (1985). "Functionally, the Use Tax Act serves to tax property purchased out of State by Illinois residents that is not taxable under the Retailers' Occupation Tax Act and at the same time attempts to eliminate the competitive disadvantage of in-State businesses." *Id.* at 69.

The UTA makes numerous sections of the ROTA (35 ILCS 120/1 *et seq.*) applicable to the Use Tax. Section 12 of the UTA incorporates sections 4 and 8 of the ROTA. These ROTA sections provide that the admission into evidence of Department records under a certificate of the Director establishes the Department's *prima facie* case and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 120/4, 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1<sup>st</sup> Dist. 1987). Once the Department's *prima*

*facie* case is established, the burden of proof is shifted to the taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1<sup>st</sup> Dist. 1987).

In order to overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with their books and records that show the Department's records are incorrect. Copilevitz, *supra*. Testimony alone is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1<sup>st</sup> Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of tax deemed due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4<sup>th</sup> Dist. 1990).

The Department's Determination was entered into evidence under the certificate of the Director of Revenue, and as such, the Department's *prima facie* case was established, and the burden of proof shifted to the Taxpayer to overcome the Department's *prima facie* case.

Taxpayer's response to the Department's case was to deny that the purchases in question were made by her. Taxpayer testified that the merchandise was bought by her estranged husband. Taxpayer further testified that the company from which the purchases were made acknowledges that the purchases were made by her husband. Tr. p. 11. However, Taxpayer neither presented testimony nor written documentation from the company to substantiate her testimony. Hence, Taxpayer failed to introduce any legally sufficient evidence to overcome the Department's *prima facie* case.

**Recommendation:**

It is recommended that the Department's Determination be affirmed.

May 23, 2008

Julie-April Montgomery  
Administrative Law Judge